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**Building the Proctor
Marble Bridge:
Conflict and Controversy**



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A covered bridge designed by Louis Wolcott was built across the Otter Creek in Sutherland Falls (Proctor) in 1841. It lasted until 1914-1915 when the present Marble Bridge replaced it. The new bridge was a gift to the town from Emily J. Proctor.

About the Author

Mary H. Fregosi is a retired educator who lives in Proctor. Her study of the Vermont Marble Company Strike of 1935 – 1936 was the subject of the 2002 fall issue of the *Quarterly* (Vol. 32 No. 3). She has also contributed “A History of the Proctor Y.M.C.A. and the Sutherland Club” (Vol. 33 No. 1) and “When the F.B.I. Came To Town: One of Vermont’s Mysteries” (Vol. 38 No.2). Mary is a Proctor native and has been intrigued by many of the pieces of Proctor’s rich history. She has also researched and written a history of the Proctor-Pittsford Country Club and a history of Proctor High School boys’ basketball.

Introduction

It is not known when the Proctor family began discussions about funding a marble arched bridge across Otter Creek in memory of Fletcher D. Proctor who was the son of Redfield, Sr. and Emily Proctor. He died in 1911. He was the brother of Redfield Proctor, Jr. What we do know is that Redfield, Jr. hired a personal friend and architect, Harry Leslie Walker, to design such a structure. It is likely that Redfield, Jr. acted on behalf of his mother in hiring Walker who as a teenager pursued various jobs in architectural offices, including that of Frank Lloyd Wright, perhaps America’s most famous twentieth century architect. Walker went on to train at the Armour Institute of Technology and Chicago Art Institute and received his B.S. degree in 1900 from M.I.T.



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The bid specifications for the bridge are dated May 18th, 1914, and were drawn up for Mrs. E. J. Proctor by Walker and Alexander Brociner, who would be the consulting engineer on the project. These included every aspect of construction from materials to cleanup upon completion of the bridge.

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Building the Proctor Marble Bridge: Conflict and Controversy

By Mary Fregosi

It is apparent that the Vermont Marble Company and the Town were generous in providing materials for the job and in cooperating with the contractor. For example, Walker noted that good, sharp sand and good gravel were available a half mile from the bridge and these, excluding transport of them to the site, were free. He added that the going rate for a two-horse team to haul the materials would be \$4.00 a day. Crushed marble of various sizes and marble dust were also available from chutes at a stone crusher located approximately one half mile from the bridge and these, also, would be furnished without cost, exclusive of transport. Likewise, the marble ashlar and other marble used in the construction would be supplied as well as any surveying necessary without cost to the construction company.



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An 1885 view of the wooden covered bridge looking northwest. Note the house of Redfield Proctor, Sr. beyond the bridge.

The contractor was to construct a three span concrete arched bridge "complete in every detail". He had to excavate all materials required to

secure proper foundations for abutments and piers and had to suitably prepare the foundations as set forth in the drawings. He had to supply all materials, including a bronze tablet, and build the entire structure, including abutments and piers as well as cofferdams, arches, spandrel and retaining walls, curbs, copings, parapets, ornamental work, drain pipes, gutters, and electroliers. The contractor had to be prepared to do extra work that might be ordered by the architect for which he would be paid a reasonable cost plus 10%. The architect also reserved the right to have any "incompetent or unfit" employee of the construction company relieved of his duties.

Work was to start eight days after the awarding of the contract and the job was to be completed on or before October 1st, 1914. For every day thereafter there was a \$25.00 penalty. Only the architect could authorize an extension time or "to prosecute it thereafter in a satisfactory manner at a proper rate of progress, in the opinion of the Superintendent (architect)" would constitute authority for the architect to suspend the contractor from the work and "employ other parties to complete it, or to employ additional labor to assist in its completion or to annul the contract."



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*A view of the old covered bridge, looking west toward the downtown.
Note the boathouse on the left.*

As part of the bid the contractor had to estimate the cost for moving the present bridge for temporary use, downstream, and for connecting it to the present road at both ends as well as taking proper care of traffic during constructions. The sum should also include the removal of the old wooden bridge and approaches after the new bridge was done and open to traffic.

The Town of Proctor signed a contract with the B&W Concrete Company of Newark, New Jersey, on June 18th, 1914.

Two days prior to this agreement Mrs. Proctor had written to the selectmen expressing her desire to finance such a bridge. She wrote: "Believing that a permanent arch bridge of reinforced concrete and marble across Otter Creek in the Village of Proctor, in place of the present covered bridge, would add much to the safety and convenience of travel and the beauty of the Village, I would be glad to give the same to the Town of Proctor in memory of my son Fletcher Dutton Proctor."

Both parties agreed to change the completion date from the 1st day of October to the 15th. Also written into the standard contract was a paragraph in which the contractor agreed to indemnify the Town against: all damages sustained by reason of any convention, article or process included in the materials furnished or the work done under this contract being covered or claimed to be covered, by patent not owned by the contractor and the contractor at its own expense agrees to defend any action brought against the Town founded upon the claim that any such article or process or part thereof infringes any such patent.

This aspect of the contract would take on great importance at a later date and would involve numerous meetings and exchanges between the contractor and the Town.

Charles F. Keife, the chief engineer, signed on behalf of the B&W Concrete Company and A. C. Freeborn, Charles W. Johnson, and W. H. Mead, signed as selectmen for the Town. The amount of the contract was \$20,965.00.

The Proctor family, owners of the Vermont Marble Company, also owned a majority of the property in the Town. In 1914 it paid 66.6% of the property taxes and typically all Town officers in one way or another were connected to the Company. A. C. Freeborn, the chairman of the



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selectmen, for example, was an engineer employed at the Vermont Marble Company. The lines between the Town and the Company were blurred at best. The Company, realizing that it would be supplying services to the B&W Concrete Company insisted a contract be drawn whereby the Town agreed to guarantee all bills owed them by the construction company. Included in the services were men, electric lights and power, supplies, machines and tools and loss or damage caused by the manipulation of the height of the water over the dam for the accommodation of the work on the bridge. This contract would be another source of contention between the contractor and the Town when the Town paid the Company by subtracting the amount from a certificate of payment.

On June 30th, 1914, as per agreement, Doremus Bensen, the president, and E. Z. Bensen, the secretary of the concrete company, signed a bond in the amount of \$10,483.00 with the National Surety Company of New York for half of the cost of the project.

In preparation for the new bridge the Town raised the highway four feet. Myron Warner, whose house was located near the site, received \$700.00 for damages sustained during that project. The Town also agreed to build a driveway down into his premises at a later date.



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Laying the 24-foot roadbed. Note the old wooden bridge at the left.

Everything seemed to be in place and townspeople anticipated having a new structure before winter set in. No one, however, could have predicted the events that were to dominate the attention of the selectmen and Vermont Marble Company officials throughout and beyond the construction of this marble arched bridge.

Signs that the Town would experience problems with the B&W Concrete Company came as early as the 23rd of July. Freeborn sent a letter to the company in which he expressed concern over the slow progress and requested that more men and equipment needed to be on the site. He asked the company what it intended to do to get the bridge completed on time. His wording reflected more concern than agitation. He also noted that the wooden bridge had been removed as of the 27th of June and if one could read into that remark, he probably was questioning why more activity on the project had not been in evidence since then.

Keife responded to Freeborn, telling him that a company representative had met with Redfield in New York City and had given him a status report on the bridge that Redfield would convey to the selectmen. He assured Freeborn that the Town would be perfectly satisfied with the work planned for the project.

The first evidence of dissatisfaction on the part of the Town is expressed in a letter written to the contractor by Freeborn on August 10th, 1914. The message was clear this time: "the progress you are making on the new bridge...is entirely unsatisfactory." He went on to state that: "We called your attention some time ago to the slow progress you were making and until Mr. Walker was here there was apparently no attention paid to our complaint. There has been a little more activity shown since Mr. Walker's visit but not nearly enough to complete the work in your contract time."

Freeborn noted that only the footing was in place for the east pier and that the west pier's foundation had not even been blasted out to the level required by the specifications. Further, he stated that there had been only an attempt to make a cofferdam in the middle of the stream for one of the center piers and as a result of this perceived lack of effort there was no progress made in getting footings in for either one of the piers that were to go in the center of the stream. He warned that there would be high water in September making it difficult to work in the center of the stream so it was imperative to take advantage of the good weather.

Perhaps Freeborn sensed that the bridge would not be ready by the October 15th deadline because he concluded the letter by stating that if

the job was not done by then the Town would "suffer a large amount of annoyance and expense" which could not be overlooked.

Chief Engineer Keife provided a prompt reply to Freeborn's concerns. On August 13th he assured the selectmen that the work would proceed "more harmoniously". He had received reports that there had been friction between his men and the Town's representatives which, the selectmen must concede, was bound to delay the progress on the bridge since the Town/Company was furnishing several of the items that made up the structure.

In truth there would be no harmony evident in the relations that developed between the Town and the B&W Concrete Company. According to the contract Walker was to issue certificates for payment and did so, issuing the first one on October 9th for \$5,940.00. On the 13th of that month Wayne Dumont, legal counsel for the concrete company, requested the payment from the Town.

The selectmen opted to send a check for \$4,152.25 instead of the full amount because the Town had paid a coal bill of \$201.46 to the Burditt Brothers, \$30.00 to the Proctor Hospital, \$10.00 to the Clarendon and Pittsford Railroad, and \$1,546.29 to the Vermont Marble Company for a total of \$1,787.75, exactly the amount they deducted from the authorized payment.

President Bensen responded immediately by returning the check and stating that his company had not had time to review those bills as they had been in their possession for a short time. Further, he found it a strange practice that the Town assume the responsibility of paying his company's bills and finally, he asserted that the Town had not made the payment in accordance with the contract.

The Town dug in its heels and sent back the check in yet another letter, the tone and message of which could not be mistaken for harmonious. Freeborn wrote that the concrete company had "utterly failed to push the work in the bridge with judgment and energy." He observed that Mr. Holzworth, the concrete company's representative, had attempted to do well despite lack of support on his employer's part. Freeborn claimed that the B&W Concrete Company had not provided sufficient equipment or material and if it had not been for what the Vermont Marble Company had furnished there would have been even less progress made on the project.

Back came a reply from Bensen in which the check was once again returned to the Town and a request made for the Town to comply with the architect's certificate of payment in the amount of \$5,940.00.

What would be the next move on the part of the Town? Benjamin Williams was an attorney and an employee of the Vermont Marble

Company and he decided to get a legal opinion from Edwin Lawrence of Lawrence, Lawrence, and Stafford, a Rutland-based firm. He wanted to make sure that the Town had a legal right in dealing with the matter as it had been doing. He also told Lawrence that the Town was inclined to do nothing further and to wait for the concrete company to communicate once again with the board of selectmen.

Williams relayed Lawrence's opinion in a memo to Freeborn. Lawrence believed that the Town had no legal right to withhold the money but he suggested that the selectmen send the check once again with the following response: "Your letter of October 26th received. We think the Town of Proctor has taken the fair and just attitude towards you and has nothing further to state than has already been written." So on November 2nd, in compliance with the legal opinion they received, the selectmen sent the check to the New Jersey firm for a third time.

Two days later Bensen acknowledged receipt of the letter and sent the check back to the selectmen, indicating in his letter that he was unable to accept it.



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This photograph suggests that little activity was taking place in the construction of the new marble bridge.

This exchange could not go on indefinitely and given Lawrence's opinion, the selectmen wrote Bensen indicating that it seemed that it was not necessary to have any misunderstanding between the two parties so they were sending the original check (\$4,152.25) along with a second check in

the amount of \$1,586.29, the two together meeting the amount of Walker's certificate less only the bill of the Burditt Brothers for the payment of which the B&W Concrete Company had given them an order to pay. It is assumed that the selectmen penned the letter with the aid of the Vermont Marble Company lawyer, Benjamin Williams, because in closing they wrote that the board assumed that Bensen's company would "promptly settle with the Vermont Marble Company for their bills." The selectmen were obviously not acting independently of the VMCO.

The Town and the Vermont Marble Company clearly were not pleased with the relationship that existed between them and the New Jersey company. For one thing, the Town not only wanted to make sure that Bensen's company paid all bills due to the Vermont Marble Company but kept track of payment it owed other businesses as well. On November 14th the Burditt Brothers forwarded a memo to Freeborn indicating that the B&W Concrete Company had paid their bills up to about the first of the month and at present owed them about \$50.00.

It was late November and the bridge was far from complete, the relationship far from harmonious, and the Town and the Vermont Marble Company far from satisfied with the progress. They had the card in their hands that could make the B&W Concrete Company go away and they decided to press the only person authorized to make that happen. Under contract Walker could annul the agreement with sufficient cause and that is exactly what he did. On November 24th, 1914, the selectmen sent a telegram to Bensen that read:

"I, Harry Leslie Walker, named as Architect...hereby certify that the B&W Concrete Company has refused and neglected and does refuse and neglect to supply a sufficiency of properly skilled workmen and materials of proper quality, and has failed and does fail to prosecute the work provided for in said contract with promptness and diligence and has other wise failed and does other wise fail in the performance of said contract, and I further certify that such refusal, neglect and failure is sufficient grounds for said Town of Proctor to terminate the employment of the B&W Concrete Company for the said work covered by said contract and to enter upon the premises and take possession for the purpose of completing the work included under said contract of all materials, tools and appliances thereon and to employ any other person or persons to finish the work to provide the materials thereafter."

The selectmen were giving notice that they were terminating the employment of the B&W Concrete Company on November 24th under the rights reserved in the contract. The relationship was severed but

there would ensue months of negotiations before each was ready to consider a written release, thus bringing to an end further claims or damages.

That same day Walker sent a copy of a telegram from the B&W Concrete Company in reply to the telegram it had received from the Town. He also informed the selectmen that he had instructed both the clerk of the works, H. E. Anderson of the Vermont Marble Company, and the contractor's superintendent, T. E. Holzworth, to make an inventory of tools and appliances and material on hand.

Bensen's company telegraphed Freeborn on the 24th: "Your action unwarranted. Architect orders contrary to Engineers. Legal action by us will follow."

Walker also sent a letter to his friend, Redfield, informing him that Keife had been in to his Park Avenue office to see him and made a "strenuous protest" against the action the Town had taken. Walker told Redfield that H.E. Anderson had written him, telling him that he had taken all reports and drawings that belonged to him to his home. He then stipulated that Anderson should be kept on the job no matter how or by whom the project might be carried on. With that in mind, he enclosed two copies of a set of directions that he had Brociner make for the concreting of the arches.

Freeborn sent a night letter-gram to the B&W Concrete Company on November 27th inquiring as to whether there were barrels of cement in transit because the Town needed several hundred barrels to complete the bridge contract. He asked the concrete company to order one car shipped to Proctor at once. If they didn't hear from the company by noon of the following day Freeborn said he would have to order enough to complete the project at prices he would be obliged to pay. Again, another telegram questioned if the B&W Concrete Company had any contracts for materials or labor which "you wish us to utilize?"

Doremus Bensen's telegram on the following day was brief and to the point: "I am on my way to Proctor. Nothing is to be done until I arrive."

It is not known how the meeting went with Bensen and Town and Company officials. What we do know is that Walker penned a letter to Freeborn stating that he was very glad indeed to know that the work had progressed so well, since it was taken over by the Town." He had been receiving daily reports from Anderson and it was his perception that everything seemed to be going very well, considering the conditions.

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The date of December 16th of 1914 confirms that this photograph was taken after the Town had taken over the bridge project. Obvious progress in the bridge construction can be seen.

The daily reports on the construction of the bridge were found when the author did some archival work at the Town Clerk's office during the winter of 2007. Anderson's reports begin on November 27th, 1914, shortly after the Town took over the work and conclude on February 5th, 1915. In them he meticulously details the work done on each day, the materials used, the labor required, the costs of each, and the temperatures at various times of the day.

When things seem too good to be true they usually are and this was just the case in this regard. On the same day Walker sent the above to Freeborn he received a report from Brociner, Walker's consulting engineer, which indicated there were some serious issues on the bridge project. Brociner had done a site inspection with H. W. Lang who had been hired to act as consulting engineer in place of Keife. Lang had been "on loan" from Callanan & Prescott, a Keeseville, New York, construction company. Lang took up residence at the Proctor Inn and Livery and remained there for 46 days according to the bill made out by the innkeeper, N. B. Ladabouche.

Brociner stated that the project leaders had failed to follow his explicit and often repeated directions on the construction of an arch and thus had compromised the elastic theory of arches. He went on to

report that it was difficult for him to know to what extent the arch had been weakened by the displacement of the reinforcements and it was even more difficult to determine what other displacement of the reinforcements had been caused during the concreting of the other sections of the arch. He felt the only thing to do was to complete the arch and have it tested after the centers were taken out. Another concern he had was that during the concreting of a section (No. 3) he noticed that the mortar had been prepared in back of the Library with cold materials and that it was later carried to the bridge and placed in position quite some time before regular concrete was put in place. That having occurred, he said he would not be surprised if the mortar facing was frozen stiff. He questioned whether the mortar facing would stick to the arch during warm weather or when the water rose to a higher level.

Walker wrote Freeborn, enclosing a copy of Brociner's report and impressing on him that Brociner's concerns were exceedingly important so he would appreciate it if Freeborn could use every effort to convince the men in charge of the work of the absolute necessity of adhering to the drawings and specifications.

At this time Walker also wrote to Anderson in response to a report Anderson had sent him. The architect noted that considerable adjustment had been necessary for the molding forms in connection with the bridge and advised him to be very careful that these forms were absolutely level or in line and were rigidly held there while the concrete was poured. If these should move after completion or if the moldings were uneven, cracked, or out of line in any way, the result, in Walker's opinion, would be "exceedingly displeasing."

On the 12th of December Freeborn replied to Walker's letter and specifically, to Brociner's report. While one cannot know Freeborn's reaction to Brociner's criticisms it is apparent that he took some of the comments personally. It is evident that Freeborn had invested and continued to invest a great deal of time on the project and desired to correct any impression that the work on the bridge was proceeding without due diligence to specifications and drawings. Quotes from this letter, though lengthy, speak for themselves.

"Since taking charge of the work it has been my intention and endeavor to carry on the work just as though I was the B&W Concrete Company and I have instructed every one having anything to do with the job and have tried myself to follow up all the instructions which we have and the plans and specifications carefully. ...I believe Mr. Brociner is a little severe in his criticism of the way the work has progressed. I am sure, if I understand the first criticism, the anchoring of the retaining walls is

just as it is shown on your plans just as near as we could build it. On the last arch, a portion of which was put in when Mr. Brociner was here, there was some displacement of the reinforcing. It was an oversight that the reinforcing was not properly propped in position before any of the arch was poured. As to the handling of the mortar for the facing of the arches- there has been very little of this mixed ahead of the time of using it, only a few pails full...I am positive none of this was frozen before it was placed. It is all backed up by a heavy bed of hot concrete. The whole bridge up above the arches and the facing has been enclosed and heated with steam underneath.... The heat underneath the arches has kept them up so that even to-day with the temperature down to about twelve above zero the top of the arches is warm to the touch....I don't think there is any question in your mind but that I have at heart the interest of the community and do not intend to have any of this work neglected or imperfectly done. We all want this bridge to be first class when it is completed and I intend to see that your wishes are carried out just so far as I am able to do so."

By the 16th of December the men were ready to fill the bridge as soon as the waterproofing was done. Walker informed Freeborn that the forms on the spandrel walls should not be removed for six days or more after the concrete had been poured. He said Anderson was going to send the correct location of all the trees, walks, buildings, and walls so he could make a study of the surrounding conditions in connection with the approaches.

Meanwhile the B&W Concrete Company's legal counsel, Wayne Dumont, wrote to the selectmen referring to a meeting between Bensen and Dumont and Redfield, Frank Partridge, the president of the Vermont Marble Company, and Freeborn. In this letter he stated that his clients still maintained their rights under the contract and that the Town took forcible possession of the bridge and were charging up as against the contract and against the balance due the B&W Concrete Company the work that the Town now claimed it was doing. He further stated that it was agreed at the meeting that both parties wanted to avoid litigation but that that would occur if his clients did not have their rights under the contract fully respected. Holzworth, the concrete company's employee, would remain at the site to provide assistance and also to monitor the progress being made for the concrete company. He felt that it was time to reach a conclusion in this matter and agree on a settlement that would be fair to both parties.



Two photographs of the work on the bridge were taken on the 16th of December 1914. Progress is evident but so is the complexity of the job.



Freeborn's reply on December 17th indicated that the arches had been poured since Dumont was in Proctor but that the project had not progressed to where he felt the respective claims could be considered and a settlement reached. He was, however, open to starting discussions at anytime.

Just before Christmas Freeborn wrote to Walker telling him that the Town had met with representatives of the concrete company and he hoped to come to an agreement. In preparation for future talks with Dumont he had Lang and Anderson go over the work on the bridge and estimate the amount of material and quantity of work that was yet to be performed under the contract. He requested that Brociner could assist the Town by going over this as well and providing his estimate. Attention should be paid to the amount of concrete needed to finish the bridge, the necessary filling work to finish the roadway and gutters, and the work required to clean out the creek channel, to strip the forms, and take out the centers.

The day after Christmas Walker wrote to Freeborn stating that he and Brociner had worked on an estimate as per his request, although it had been extremely difficult to do so. He cautioned Freeborn that the east pier had cost extra and he told him to be careful not to present that figure to the contractor before they submitted their claim for the extra work because they would make it as large as they possibly could and negotiate from there. He and Brociner felt that the cost to complete the bridge as per all items in the contract would be \$3,258.00.

The time had now come to settle. Dumont wrote on December 29th that he and representatives from the concrete company would be in Proctor on January 4, 1915, at 8:00 a.m. Things did not go well at this meeting and the parties were not able to reach an agreement. Bensen wrote a short note to Freeborn on Hotel Berwick stationery on the same day indicating that he felt entitled to a payment on account, the amount of which he would leave for the Town to decide.

The following day Redfield wrote to Walker to apprise him of how negotiations had gone. The Town offered to pay the concrete company \$10,000.00 but the B&W Concrete Company dismissed the offer, indicating that it wanted \$23,000.00. Later it offered to accept \$19,000.00. Since the contractor was going to furnish the bronze tablet, the Town raised their offer to \$11,000.00. Redfield requested that Walker come to Proctor and speak with Edwin Lawrence since the B&W Concrete Company, he felt, "showed no inclination to compromise." Redfield also expressed concern that Brociner was "pretty sensitive" and that Keife and Bensen were "quite unsparing in their criticisms of him (Brociner)." He wrote that he was a bit fearful

that they might irritate Brociner and get him to make statements that he should not make and finished by saying that Walker should make certain that Brociner give nothing in writing to the B&W Concrete Company.

Redfield's letter got a prompt reply from Walker and assurances that Brociner would not appear in the settlement except through him and only if it was absolutely necessary.

On January 19th, 1915, Walker informed Freeborn that he had met with Bensen and Keife and wanted to come to Proctor to meet when Redfield could be present. The following day Freeborn informed Walker that the new bridge was in use and that the wooden structure was being torn down. As for Redfield, he had spoken with him and he was busy in Montpelier (Redfield was serving in the House at this time.) but could meet on a Monday morning, although Redfield suggested that Walker meet with Freeborn and Mr. Thompson (A.Z. Thompson) as he didn't feel he could help the situation.



This January 15th photograph shows the new bridge in use.

When Keife discovered that Walker was coming to Proctor to meet with Town and Company officials he wrote Freeborn stating that it would be "advisable" for representatives to be in Proctor at the same time because the concrete company insisted on settling the account "in the immediate future." Concluding the letter, he phrased the

sentiment more strongly: "While we prefer an amicable settlement, without sacrificing anything that we feel is justly due us, if such is not possible, we are desirous of knowing it at once so we may proceed to collect the amount of our statement by other means."

With the new bridge in operation there was no longer any need for the services of H. W. Lang. Frank C. Partridge sent a letter to Callanan & Prescott thanking the company for allowing Lang to come to Proctor and oversee the completion of the bridge in which he indicated that: "Mr. Lang certainly knows his business and under his direction, we were able to complete the concreting of the bridge so that we are now using it."

In late spring of 1914 H. L. Sherman had sent a letter to Redfield in which he requested that his company, the newly organized New England Bureau of Tests, be given the job of making the tests of cement and aggregates as well as the inspection of reinforcing bars on the new bridge. He asked Redfield to assist him in getting this assignment because he knew that Walker was a close friend. Sherman's company got the job and performed 30 tests throughout the project, the last reported being dated January 6th, 1915.

The Town had completed the bridge but the negotiations between the concrete company and the Town were far from over. One of the issues that needed attention was determining the cost of the extra pier. Redfield advised Freeborn to arrange for an engineer to come to Proctor to provide an estimate. The H. P. Cummings Construction Company of Ware, Massachusetts, sent Henry T. Rowe to provide a cost for the additional work. In a letter to Freeborn Rowe noted that it was not the customary practice for his company to give such estimates on work done by its competitors but due to the fine relationship with the Vermont Marble Company on work completed in the past, Rowe felt justified in making an exception in this case. He thought that \$2,200.00 would be a liberal amount for the work. This amount included the contractor's profit as well as the use of tools, machinery and overhead expenses, if done by skilled mechanics in this class of work, providing there had been no high water.

The daunting task of determining the validity and cost of each claim brought by the B&W Concrete Company fell to Walker. He wrote to Freeborn in mid-February informing him that he had worked continuously on the matter for several days, giving it a great deal of study and thought while trying to keep in mind the rights of the contractors as well as those of the owners in order to arrive at a decision that was fair. He rejected several claims, many for the

reason that he did not consider them to be extra. On other claims he allowed 28/46ths of the claim based on the following reasoning:

"Owing to evident lack of proper organization and equipment and lack of evident desire to push the work in a proper manner to an early completion I considered that the actual cost of and time consumed in executing the necessary extra work on the east pier foundation was much greater than it would have been if the contractors had maintained a good organization, proper equipment and had used due diligence in the conduct of the work during the period of the contract before it was found that this extra work on the east pier foundation would be necessary."

In his opinion the cofferdam that was originally erected by the contractors for the east pier was not built properly and was not sufficiently substantial to take care of the work as originally planned. Consequently the cost of reinforcing and rebuilding this cofferdam to take care of the extra foundation in connection with the east pier was much greater than it otherwise would have been had the cofferdam been built properly.

Walker also concluded that the work the Town was doing on the bridge after they took away the contract was much more expensive than it would have been had it been done earlier in the fall under significantly better weather conditions. He understood that it had actually taken 46 days to build the extra foundation of the east pier up to a point approximately eight feet above the level of the bottom of the foundation. In his professional opinion it would have taken 28 days to build such a structure under more suitable working conditions. In determining the extra cost, he therefore allowed 28/46 of the amount claimed by the contractors. In concluding, he stated that he had based his conclusions on arguments that were unassailable. The two biggest costs claimed by the B&W Concrete Company were for the construction of the extra pier in the amount of \$6,844.89 and for labor at \$3,513.00. The total claims amounted to \$8,999.22. Walker allowed \$5,516.43 and disallowed \$3,482.79.

To figure out how much was owed the B&W Concrete Company he used the original contract price of \$20,965.00 and added on the allowable extra cost of \$5,516.43 that totaled \$26,481.43. Then he subtracted the following from that figure: the amount of the architect's certificate of \$5,940.00, the 78 days of penalty at \$25.00 which totaled \$1,950.00, the expenses that the Town spent from November 24th until January 15th which added up to \$5,170.12, and the estimated cost of completing the contractor's work which totaled

\$1,775.00. These deductions totaled \$14,835.12 and when subtracted from \$26,481.43 left the balance due to the contractor in the amount of \$11,646.31.

Negotiations were interrupted in early February due to the death of Redfield's mother, Emily. Then Dumont requested that a meeting scheduled for the end of February be postponed. The Town was amenable to this request because Freeborn was ill, under doctor's care, and was confined to his home for at least a week or more. It would not be until the 20th of March before both parties were able to meet.



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A close up photograph of the arch construction.

Between early February and the middle of March work proceeded on the approaches to the bridge. Freeborn wrote Walker that they were moving the stone ledge near the new store (what would be Eckley's store) and wanted to use the rock for fill at the new bridge approaches but they couldn't do that until they had a definite set of plans from which to work. He therefore asked for sketches for the approaches, per Redfield's advice. Walker replied to Freeborn's request for sketches by indicating that he needed to come to Proctor and work on the sketches with Freeborn right at the site. He felt that the best solution from an artistic and practical standpoint was to build simple retaining walls out of marble blocks along the sides of the sidewalk from the bridge to

the Library, from the bridge around and past the boathouse, from the bridge around and down into Mrs. Proctor's lane, along the front of Mrs. Proctor's property and around, down, along the west side of Mrs. Proctor's lane, and then on the south side of the main road from the bridge up to the small bridge over the tracks. He did not want to cut down any trees and wherever a tree came in the sidewalk he suggested that a well should be built around it with a pipe railing to keep people from falling in the hole.

The March meeting between the two parties brought no settlement and if anything, resulted in some hard feelings on the part of Dumont. It would appear that Dumont was also frustrated with Freeborn. In a letter to Partridge he stated that he had journeyed to Proctor "at great personal inconvenience". He regretted that Freeborn's treatment of the issues being discussed were not as important as Dumont perceived them to be and was extremely irritated. He had presented a proposition for the Town's consideration that morning but it had taken Freeborn at least two and a half hours to call Partridge into the meeting room to consider the offer. At that point Partridge had only 20 minutes to devote to the meeting as he was scheduled to board a train shortly after entering the negotiations. Dumont said, "I went away from that conference in a decidedly different frame of mind than that with which I approached it." As for Freeborn, Dumont said that they could never agree because Freeborn did not speak for himself but simply acted as an agent for others and could not serve the Vermont Marble Company and the Town of Proctor with fairness to both sides.

Much irritated and exasperated by the treatment accorded him at that meeting he opined that most of the people he dealt with in Proctor appeared indifferent to the matter. That being so, he felt there was no alternative but to settle the matter in the U.S. District Court of Vermont. That would mean considerable expense and trouble for both sides but he felt that it would not mean any more expense or inconvenience than the cost of the many trips he and his clients had made to Vermont without any results. Then he unloaded all the vitriol he had been storing up since the meeting. "I went to Proctor and made a definite proposition. It was not met by any counter-proposition of any kind whatsoever. In plain English, Mr. Freeborn's decision for me was to 'take what I give you, or go home' ". He made it very clear that he no longer wanted to deal with Freeborn and proposed that he meet one more time, but this time with Redfield, Partridge, and Walker. If Partridge believed that his remarks were written in a "state of pique", he assured him that was not the case.



Cleanup of the wood used in forms was a major task.

Partridge's letter to Dumont must have crossed in the mail with Dumont's. Partridge expressed regret that he had to leave the meeting but said that based on information from Freeborn, his presence would not have altered the result. He said he was writing "because as a personal matter between us I do not want you to think that I was indifferent to the long trip you had made or the importance of the matter at issue." Partridge had read the situation correctly, for all the good that did.

While these negotiations for a settlement were transpiring a registered letter from Edwin Thacher was sent in mid-March to Emily Proctor, notifying her that she had infringed on his U. S. patent No. 617,615. He informed her that he had given his power of attorney to George A. Bacon of Springfield, Massachusetts, with authority to act in his name in the collection of royalties to which he was legally entitled. Thacher said he wished to settle the case amicably without going to court but he had given his attorney authority to take that step in order to best protect his rights. Mrs. Proctor was dead so her son, Redfield, was left to respond to this allegation.

One can only imagine Freeborn's reaction when he was told the latest news in regard to the bridge. He immediately sent a copy of the Thacher letter to the B&W Concrete Company and requested any information the company might have in this regard. Freeborn also reminded the company that according to the contract it was up to them to protect the Town in regard to infringements. He also wrote Bacon, informing him that the bridge was built by the B&W Concrete Company and there was a provision in the contract that protected the town against all patents. He said, "I know nothing as to whether our construction was the same or similar to that involved in the Baltimore suit, nor do I understand the merits of the claim which you make. If your contention is correct, what is the amount of your claim?"

Partridge penned a letter to Attorney Bacon on April 3rd, 1915, informing him that Mrs. Proctor had only contributed money to the Town for a new bridge but had nothing to do with the construction of the bridge. He suggested that the matter be taken up with the B&W Concrete Company.

Partridge may have referred the attorney to the concrete company but intrinsically he realized that the issue was far from solved. On April 8th he sent a memo to Redfield, Freeborn, and Attorney Lawrence in which he stated that: "the claim for infringement of patent in connection with construction of the new bridge has become serious." A U.S. District Court in the State of Maryland in an action against the City of Baltimore had found in favor of Thacher in a case that he said was similar to the construction completed in Proctor. The Mayor and the City of Baltimore were found to have infringed on the rights of Thacher by building the Fallsway Viaduct and the court had found for the plaintiff in the amount of \$5,000.00. He strongly alerted them to keep this case in mind when determining a settlement with the concrete company since it was absolutely essential to make sure that the Town was left with protection against any infringement right that might be brought against it.

Bacon's letter of April 15th clearly outlined his client's position. He asserted that there definitely had been an infringement in the construction of the arches and that infringement continued by virtue of the Town's ownership of the bridge. He further stated that the Town could seek indemnity against the B&W Concrete Company but that was not his issue. Putting it even more frankly he said, "...it is immaterial to us who is the ultimate loser." Bacon informed Freeborn that he was making settlements on the basis of three and a half percent of the construction cost if these were done without litigation. Where Bacon had to pursue the matter in court his client

was being awarded 5%. In closing, he noted that he had been informed that the bridge had cost in the neighborhood of \$25,000.00 and advised Freeborn to give the matter his prompt attention.

Freeborn did not pen a quick response to Bacon. He wrote a letter some two weeks later informing Bacon that the Town had not reached a final settlement with the B&W Concrete Company and when it did so it would take up with them the subject of his infringement claim.

Partridge sent a memo to Redfield on May 1st, 1915, indicating that Bacon would accept \$625.00 to settle the claim so he needed to keep this in mind during negotiations with the concrete company. He stated, "Will not be satisfactory for us to pay them in full and trust them to protect us or to try to get any satisfaction out of their bond."

By mid-May the Town and the concrete company were getting closer to accepting a settlement that would be agreeable to both parties. Dumont wrote to Redfield on May 15th stating it was his understanding that the Town would pay the \$3,000.00 it owed the Vermont Marble Company out of the moneys due the B&W Concrete Company but in no case was it to receive less than \$11,800.00. It was also to be understood that the Town was to finish the bridge and pay any disbursements since it took it over. If that was agreeable, Dumont said that his client would give the Town full release of any and all claims of any kind.

Redfield's response to Dumont's on May 18th was explicit. He accepted the proposition with the following conditions: 1. the sum to be paid was full and final payment under the contract, 2. the payment covered all extra work and materials not included in the original contract and all claims against the Town for having taken the work over and for any other reason whatsoever, 3. the Town waive any and all claims against the concrete company for any delay in the contract, 4. the concrete company would settle the claim of Edwin Thacher for infringement and produce a proper release and in default of the company doing this the Town would withhold out of \$11,800.00 an "amount sufficient in the opinion of the Town to fully indemnify itself against said claim and threatened litigation", 5. the settlement would not relieve the concrete company from indemnifying and saving harmless the Town against all damages by reason of any infringement of a patent as per the contract, and 6. the concrete company would indemnify and save harmless the Town against all claims that might be made on account of material furnished or labor done on the bridge before the work was taken over by the Town excepting the claims of the Vermont Marble Company and also on account of damages resulting from acts or neglects of response informed Redfield that the form of the bond was ok and that

employees and agents of the concrete company prior to the time the work was taken over.

On June 9th, Dumont responded to Redfield's letter and indicated that he agreed to the conditions laid out in #1, #2, #3, and in #6 but that #4 and #5 were not acceptable. He strongly opposed the idea of the Town setting aside a certain amount of the settlement and informed Redfield that his client would indemnify the Town against any and all claims for damages that might arise in that regard but he refused "under any circumstances to permit the Town of Proctor to handle our business." He said that his client would put up a surety bond indemnifying the Town against any and all claims of violation of the Thacher patent. He was upset that the Town now wanted to settle the claim and he clearly stated that it was none of the Town's business. Further he told Redfield that the Town's position in this regard had not been brought up during a recent meeting he had had with him in New York.

He had had enough. He emptied both barrels into Redfield: "Something new is always inserted after an agreement has been reached. Now, in all frankness, you are not dealing with that kind of man. When I gave you my word as to what I would advise, I intended and still do intend to keep it, but I cannot have anything inserted in that agreement which was not discussed even at the time we made the agreement...." His final salvo was even more powerful: Agree to what we agreed on or "the litigation which we do not court, but of which we are not afraid, will have to take place."

Partridge responded upon receipt of Dumont's letter to inform him that Redfield had gone to Texas on a ten-day trip and had left a memo indicating that he had not had time to give the letter proper attention. Partridge indicated that he would be happy to do what he could to settle the matter. He also said that he felt that Dumont had taken "undue umbrage at Mr. Proctor's letter of May 18th." Then he got to the heart of the issue. He explained that the Town should not be left with a threatened patent suit with the only assurance against it a surety bond. He went on to say that the Vermont Marble Company had to bring 15 lawsuits in the previous three years in order to get surety companies to perform their bonds. He asked that Dumont dispose of the Thacher claim concurrently with the settlement even though he admitted that "there is an element of unfairness in insisting that it must be done". If it could not be done at that time could Dumont propose another method than a surety bond? Absent any other way, the Town would take a bond if the amount and form were acceptable.

Dumont's reply to Partridge revealed that he had "felt a little hurt" at Redfield's remarks because there were things in the letter that had not been discussed. He said that the B&W Concrete Company might give the Town a bond of its own without a surety company bond if the Town wished it. He asked that Partridge inform him of the amount and the form of the bond for his consideration.

Partridge's response included a suggestion that a bond in the amount of \$3,000.00 would be acceptable and he also enclosed a draft of a form. As for the National Surety Company, the agency used for the bond on the bridge, he found that it was unsatisfactory as the Vermont Marble Company had brought three suits against this firm. Instead, he listed several companies that would be acceptable.

On July 20th Dumont wrote to Partridge. He had no objection to the proposed form of the bond but felt that \$1,000.00 was an adequate sum. As for the National Surety Company, Dumont noted that it had a very good reputation in his section of the country and that the B&W Concrete Company could get a bond signed "in two minutes" from them. To deal with another surety company would involve establishing security and undergoing a thorough check of the concrete company by the prospective bond company. Not wishing to undergo this process, the board of directors of the B&W Concrete Company, after a long discussion, insisted on using the National Surety Company.

Prior to leaving on a two to three week trip to New Brunswick, Partridge informed Dumont that the Town would accept a bond for \$2,000.00 with the National Surety Company.

On the last day in July Dumont wrote Redfield in regard to the Thacher claim. At the bottom of the letter he wrote in his own hand that his remarks were intended as private correspondence and asked that the letter not be incorporated in the Town records because he was personally giving him information from reliable sources. The letter, however, is included among the correspondence and it is apparent when one reads the letter why Dumont made his request. Dumont wrote, "I don't regard the Thatcher (sic) claim as anything else than a claim of blackmail, and I might as well be very frank about it. They threaten everybody, and then take what money they can get under their threats. I am not so easily scared."

In mid-August it appeared that the protracted discussions regarding a settlement were coming to a close. Redfield wrote Dumont saying that Partridge was back in Town and counter-offered to accept a \$1,500.00 bond provided that the B&W Concrete Company give the Town unlimited protection against any patent litigation. Dumont's

response informed Redfield that the form of the bond was ok and that he would forward the bond to him. Upon receipt of that he expected the Town to send a check for \$11,800.00 and requested a receipted bill from the Vermont Marble Company of all claims against his client as well as a release by the Town of all claims of any kind whatsoever under the contract. Redfield replied, indicating that all the suggestions in Dumont's letter were satisfactory but again he wanted an understanding between them that the B&W Concrete Company would provide unlimited protection for the Town against any patent litigation. That being agreed to, the Town would release the concrete company from the contract with the exception of Article IX. Which dealt with patent infringements.

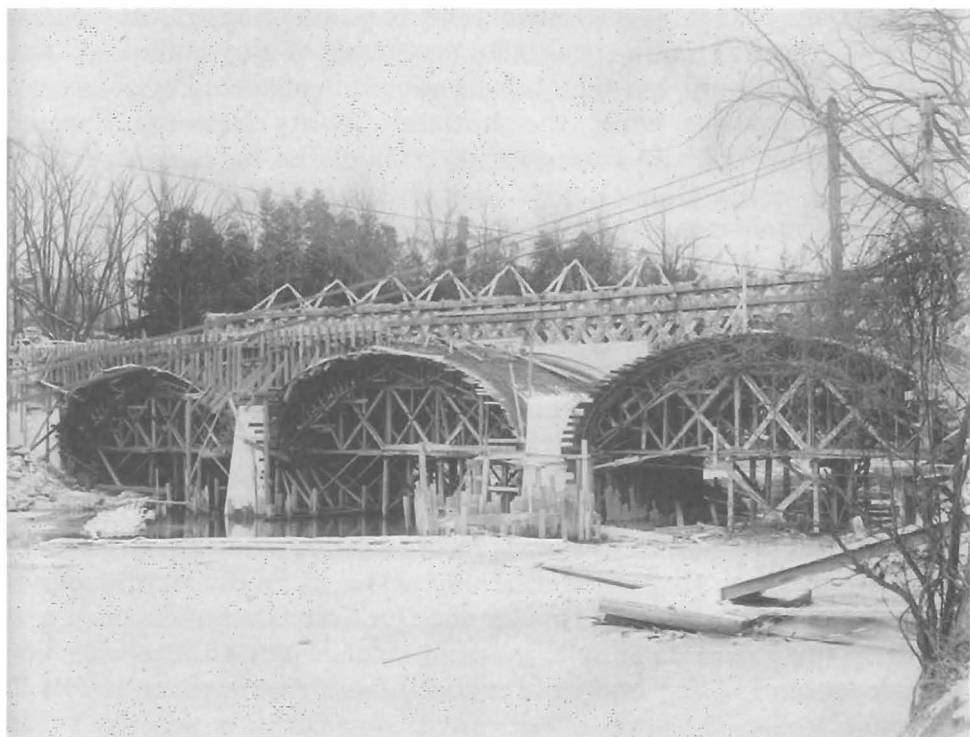
Attorney Lawrence drafted a mutual release that needed to be signed in duplicate originals. Once the B&W Concrete Company signed the release Partridge asked them to send it and the bond of indemnity to the Proctor Trust Company with directions to deliver it to the Town upon the Town's executing and delivering to the bank for the B&W Concrete Company an original copy of the release executed on the part of the Town, a receipt in full from the Vermont Marble Company, and a check for \$11,800.00. It may have come as no surprise to Dumont to be informed that Partridge was the president of the bank and that Redfield was the vice-president. Informing him of such, Partridge gave him an alternative bank, the Rutland County National Bank in Rutland from which to execute the terms of the agreement if he so desired.

By mid-October each party had complied with the agreement. The Town had received a signed mutual release form and a bond for \$1,500.00 from the B&W Concrete Company and having received these two items, delivered to the New Jersey company a draft in the specified amount and a receipt in full from the Vermont Marble Company.

It had taken months of meetings and correspondence, as well as compromise, but it was finally over. The issues had been solved to the satisfaction of both parties. The Town had a new bridge and one whose image defines the Town. It wears a beauty during each season of the year. Its setting is indisputably one of the most picturesque in Vermont. Those who visit Proctor for the first time often take with them an image of this simple, graceful structure and those who have the pleasure of seeing and crossing each day never seem to tire of its charm.

The story cannot end without acknowledging the men who built the bridge, who endured the temperatures of the late fall and winter of 1914-1915. Only two workers were hurt seriously enough to require

hospitalization. Charles Holland, an employee of the B&W Concrete Company spent two weeks at the Proctor Hospital recovering from an accident, and Andrew Mooney, a Vermont Marble Company employee, broke his leg on the job. Those Vermont Marble Company workers, many of whom were immigrants, labored for as little as 15 cents an hour while others garnered 30 cents for their hourly wage. Steve Biro, for example, worked 12 hours for \$1.88 while G. McIntire earned \$7.25 for his 29 hours of labor. Carl Nicholson earned \$16.50 for 55 hours of work on the bridge. Their names reflect the diverse population of Proctor at this time: Tatarinowicz, Szurs, Gallipo, Erickson, Kisaw, Stanley, Kiss and Kaleschinski. The pictures during its construction phase reveal the weathered faces of these unidentified workers who were instrumental in creating this memorial that was given in memory by a mother for her son. In another sense, since the construction project was taken over by the Vermont Marble Company and the Town it became a memorial to all those workers, skilled as well as unskilled, who brought the project to completion.



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Cleanup and finishing touches were all that was left now. The conflict and long controversy was finally over. A bridge begun as a personal memorial has become a face of the Town of Proctor.